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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,497	02/01/2002	Kraig R. White	FIS920010178US1	4513

7590 11/16/2004  
McGuireWoods LLP  
Suite 1800  
1750 Tysons Boulevard  
McLean, VA 22102

EXAMINER

TORRES, JOSEPH D

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 11/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/066,497

**Applicant(s)**

WHITE, KRAIG R.

**Examiner**

Joseph D. Torres

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 09 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Drawings*

1. In view of the amendment to the specification filed 09/09/2004, the Examiner withdraws all objections to the drawings.

### *Response to Arguments*

2. Applicant's arguments filed 09/09/2004 have been fully considered but they are not persuasive.

The Examiner would like to point out that the Applicant did not present any arguments with regard to 35 U.S.C. 112 rejections of the last office action; hence the examiner assumes the Applicant is in agreement with the rejections yet has failed to amend the claim language to correct the 112 issues. The Examiner maintains all of the 35 U.S.C. 112 rejections of the last office action.

The Applicant contends, "The Declaration sets forth specific facts, of sufficient character and weight, to establish a **date of conception** before the effective date of the Ito reference of August 8, 2001, and to show that the Inventor and his attorneys exercised **due diligence** from a time before the effective filing date of the Ito primary reference to a constructive reduction to practice, i.e., to the filing of the application".

The Examiner disagrees and asserts Exhibit A lacks at least the one following key elements from claim 1 for reduction to practice: "a refresh execution circuit for reducing said refresh rate in said sleep mode and increasing said refresh rate in said active mode" (Note: this is an extremely critical element since the claimed invention in Claim 1 of the current application is directed to "reduced refresh rates").

The Examiner would like to point out that the declaration explicitly states on page 2, "As evidenced by Exhibit A, the memory system having a reduced refresh rate includes" ... "a refresh execution circuit for reducing a refresh rate in said sleep mode and increasing said refresh rate in said active mode", which is at least one incorrect statement since as pointed out above, Exhibit A lacks the following key element from claim 1 for reduction to practice: "a refresh execution circuit for reducing said refresh rate in said sleep mode and increasing said refresh rate in said active mode".

The Examiner disagrees with the applicant and maintains all rejections of claims 1-20. All amendments and arguments by the applicant have been considered. It is the Examiner's conclusion that claims 1-20 are not patentably distinct or non-obvious over the prior art of record in view of the reference, Ito; Yutaka et al. (US 6697992 B2, hereafter referred to as Ito) as applied in the last office action, filed 06/28/2004. Therefore, the rejection is maintained.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

See the Non-Final Action filed 06/28/2004 for detailed action of prior rejections.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. Claims 1-5, 7-11, 13 and 14 are rejected under 35 U.S.C. 102(e) as being anticipated by Ito; Yutaka et al. (US 6697992 B2, hereafter referred to as Ito).

See the Non-Final Action filed 06/28/2004 for detailed action of prior rejections.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
  2. Ascertaining the differences between the prior art and the claims at issue.
  3. Resolving the level of ordinary skill in the pertinent art.
  4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
5. Claims 6, 12 and 15-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ito; Yutaka et al. (US 6697992 B2, hereafter referred to as Ito).

See the Non-Final Action filed 06/28/2004 for detailed action of prior rejections.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph D. Torres whose telephone number is (571) 272-3829. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert Decady can be reached on (571) 272-3819. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Joseph D. Torres, PhD  
Primary Examiner  
Art Unit 2133

